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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

CONTINENTAL RECOVERY GROUP,  
LLC,

Plaintiff and Appellant,

v.

NCOM, INC.,

Defendant;

SAIED KASHANI,

Intervener and Respondent.

B207436

(c/w B207437)

(Los Angeles County  
Super. Ct. Nos. BC205938 &  
BC207053) )

APPEALS from orders of the Superior Court of Los Angeles County.

Murray Gross, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

Hill, Farrer & Burrill and Daniel J. McCarthy for Plaintiff and Appellant.

Saied Kashani, in pro. per., for Intervener and Respondent.

This is a case in which, in the words of counsel for the respondent creditor, appellant “hopes to ‘swoop in’ at the last minute and obtain the fruits of [an attorney’s] labors and expense without effort.”

These consolidated appeals are from orders in postjudgment supplemental proceedings determining the priority of liens against \$250,000 owed to an insolvent corporation, Ncom, Inc. (Ncom). Appellant, Continental Recovery Group, LLC (CRG), initiated the proceedings as assignee of two superior court default judgments against Ncom. Respondent Saied Kashani (Kashani), an attorney for Ncom, intervened in the proceedings to assert an attorney’s lien against the \$250,000. In two materially identical orders – rendered in each of the two cases in which CRG is the assignee judgment creditor – the trial court held that Kashani’s lien was valid and superior to CRG’s, and that Kashani was entitled to payment. The court further declined to make its orders without prejudice to proceedings in a creditor’s suit that CRG filed just before the court rendered its decision (CRG’s action).<sup>1</sup>

On appeal, CRG advances a series of rather questionable procedural arguments, including that the court should have deferred to CRG’s action filed at the eleventh hour after it realized it was not going to prevail, that CRG was improperly denied discovery against third parties, and that Kashani improperly did not file a complaint in intervention. In addition, CRG contends that the orders sustaining Kashani’s attorney’s lien were erroneous because Kashani’s underlying fee agreement with Ncom is invalid as a corporate matter, violates the State Bar Rules of Professional Conduct, and in any event no fees are due under the agreement. We find none of CRG’s contentions meritorious, and we affirm the orders below.

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<sup>1</sup> The court also denied a claim of lien priority by EMM Credit Corporation (EMM), an entity for which Kashani also appeared. EMM did not appeal this determination and is not a party to this appeal.

## FACTS

Ncom is a former manufacturer of electronics equipment that was incorporated in Delaware in 1994 as Newcom, Inc., and operated in the Los Angeles area.<sup>2</sup> In 1997 its parent, Aura Systems, Inc. (Aura), sold a portion of Ncom's stock publicly. Soon after that, Kashani was elected a director. Over the next two years, Ncom's financial standing declined severely, creditors sued, and by May 1999 the company had become insolvent and ceased doing regular business.

Although other directors apparently resigned, Kashani remained involved. In 2001, he paid to reinstate Ncom's corporate status in Delaware and California. In August 2002, Kashani purchased from Ncom a large quantity of its stock that it held, and he proceeded to add his father as a director.

In September 2002, federal prosecutors in Los Angeles alleged that certain persons associated with Ncom had defrauded it of several million dollars. One of those individuals, former Ncom director Alexander Remington, reached a plea agreement in which he detailed how the scheme had operated. Kashani determined to pursue Ncom's losses from Remington and other responsible parties. He entered into a retainer and contingency fee agreement with Ncom (fee agreement), which provided for a combined hourly and percentage fee, all of which would be payable from Ncom's recovery. The fee agreement also granted Kashani a lien on any action, judgment, settlement, or assets obtained, to secure payment of his fees and costs.

In 2003, Kashani filed a federal lawsuit in Los Angeles on behalf of Ncom against Remington. In 2004, Ncom added as defendants Remington's companion, Cara Guri (Guri), as well as a corporation Remington had owned. In March 2006, Ncom obtained a judgment against all three defendants for approximately \$2.5 million.

Starting in December 2006 and continuing until May of the following year, Kashani negotiated a partial settlement with Remington and Guri (both of whom resided

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<sup>2</sup> The name change to Ncom was effected in 2001. We refer to the corporation by that name throughout.

in Georgia). The agreement was finally signed July 8, 2007. One of its provisions was that on or before August 30, 2007, Guri would pay Ncom \$250,000.

Meanwhile, while Kashani was finalizing the settlement agreement with Remington and Guri, somebody<sup>3</sup> was forming CRG in Georgia. CRG's Georgia Certificate of Organization was dated March 1, 2007. CRG was formed for the declared purpose of investing in judgments and other receivables; however, the only judgments CRG acquired were against Ncom. CRG proceeded to acquire, by assignment, about nine outstanding judgments against Ncom dating from 1999-2000, including the default judgments in the two superior court cases in which the proceedings below were prosecuted. (*Executive Accounts Management, Inc. v. Newcom, Inc.* (Super. Ct. L.A. County, 1999, No. BC205938) (*Executive Accounts*) [\$157,676.33] ; *Tatung Company of America v. Newcom, Inc.* (Super. Ct. L.A. County, 1999, No. BC207053) (*Tatung*) [\$132,877.44].)

On August 28, 2007, two days before Guri was supposed to deliver her \$250,000 payment to Kashani for Ncom, CRG initiated the proceedings below by obtaining orders in the *Executive Accounts* and *Tatung* actions for appearance and examination of a third party (Guri), under Code of Civil Procedure section 708.120, subdivision (a).<sup>4</sup> CRG served Guri with the orders in Los Angeles the next day, at 11:00 a.m., at the Back Porch Restaurant at the Marriott Downtown. Because CRG's applications specified the property in question – Guri's \$250,000 and her other obligations under the federal

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<sup>3</sup> The record does not disclose who this "somebody" is, but the trial judge strongly suspected that Guri and her companion Remington were involved. At one point, the judge used the word "conspiracy." The judge noted the "appearance . . . that there is some connection between Ms. Guri and Continental and the other individual . . . ." According to Kashani, CRG's listed address was "very close to Remington and Guri's residence in Duluth, Georgia and close to their attorney's office." Its Georgia attorney was at the identical address as Guri/Remington's lawyer, in the same suite in fact, and perhaps sharing the same telephone line. Interestingly, CRG's Los Angeles counsel "declined to reveal the identity of his principal and contact person at CRG."

<sup>4</sup> Undesignated section references are to the Code of Civil Procedure.

judgment and a Georgia counterpart that Kashani had commenced for enforcement – the service created liens on that property in favor of CRG. (§ 708.120, subd. (c).)

On August 31, 2007, CRG presented an ex parte application for an order restraining Ncom from transferring its interest in the subjects of CRG’s lien, including the \$250,000. Kashani appeared in opposition on behalf of Ncom, himself, and EMM, which had acquired substantial debt of Ncom from its principal lender. Kashani told the court that he and EMM wished to assert liens that were superior to CRG’s. The court granted the restraining order and told Kashani that he and EMM could assert the priority of their alleged liens if they intervened in the proceedings (see § 708.190). Thereafter on October 3, 2007, the court granted CRG’s application for assignment and payment to it of the subjects of its lien, but stayed the requirement of payment pending resolution of the claims to lien priority that Kashani and EMM were asserting.

In the last week of October 2007, Kashani and EMM filed in the *Executive Accounts* and *Tatung* actions motions to establish priority of their liens, supported by documentation, including Kashani’s fee agreement with Ncom and time records of his work in obtaining and pursuing the federal judgment. The motions were accompanied by proposed complaints in intervention, seeking declarations of lien priority and injunctions against payment to CRG. Perhaps prematurely, the complaints were filed on October 29, 2007<sup>5</sup>. At a November 20, 2007 hearing with respect to the motion for lien priority, the court found that Kashani and EMM had made sufficient applications to be allowed to intervene and so ordered. CRG noted that Kashani and EMM had already filed

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<sup>5</sup> As we will discuss later, appellant claims at pages 26-27 of its opening brief (AOB) that respondent never filed any complaints in intervention. The record belies this contention, and we are frankly at a loss to comprehend why appellant would have made this assertion. At oral argument appellant’s counsel insisted that the complaints in intervention were never filed because the trial court said it was not necessary to file them. Appellant’s counsel is wrong. If a bench officer does not require a party to file a document but the party does so anyway, it strains logic to say that the document was not filed. Both complaints in intervention bear a “filed” stamp. The clerk never canceled the filings. The complaints in intervention were filed.

complaints in intervention, but the court told CRG it did not need to answer them, given the posture of the proceedings.

The day before the November 20, 2007 hearing, CRG conducted its third-party examination of Guri, and the court entered an order requiring Guri to turn over the \$250,000 settlement amount to the Los Angeles County Sheriff. At the hearing on November 20, the court preliminarily ruled that EMM had not advanced sufficient competent evidence to establish that its lien was superior to CRG's. At CRG's request, the court continued the hearing on lien priority to January 29, 2008, in view of the late filing of Kashani's reply papers. In the interim, CRG filed further opposition papers. It also conducted the second of what would be three days of a judgment debtor's examination of Kashani, as Ncom's representative.

On January 29, 2008, the court again ruled that EMM had failed to establish a lien having priority over CRG's. A discussion ensued regarding CRG's request for a continuance to conduct certain discovery of a third party (Aura). CRG acknowledged it had conducted discovery through two sessions of its judgment debtor examination, but claimed that Kashani had hidden some things. CRG also agreed with the court that no authority existed regarding the permissibility of third-party discovery in a proceeding initiated by intervention under section 708.190. However, CRG urged discovery should be allowed for itself, as the responding party, although not to the interveners.

Citing section 2016.070 and analogizing to other summary third-party proceedings, the court opined that such discovery was not obtainable. If, however, Guri commenced an action by interpleading the money, then full discovery would be authorized. The court then granted a further continuance.

The judgment debtor's examination – described in the minute order as an examination of Kashani as a third party – was completed on February 4, 2008. On February 28, CRG commenced a new lawsuit (CRG's action) in the superior court by filing a 28-page, 182-paragraph complaint, against Ncom, Kashani, EMM, and Guri. The complaint set forth the history of Ncom and the present proceedings (from CRG's

perspective) and alleged that CRG was relying on information obtained in its debtor's examination of Kashani "for many of the allegations and the causes of action in this pleading." CRG demanded a jury trial on unspecified causes of action.

The complaint sought declarations that Kashani and EMM did not have valid liens on the \$250,000, that Kashani was not an officer, director, or shareholder of Ncom, and that his actions as such were "null and void." The pleading alleged eight other purported causes of action, some seeking punitive damages from Kashani. CRG styled several of its claims as derivative causes on behalf of Ncom; it did so in purported reliance on a case in which the Delaware Supreme Court had stated that creditors of an insolvent corporation could bring derivative claims for breach of fiduciary duty against the corporation's directors. (*NACEPF v. Gheewalla* (Del. 2007) 930 A.2d 92 (*Gheewalla*).)

CRG's action sought no relief against defendant Guri other than the initial declaration. But on March 17, 2008, just as CRG predicted in its papers accompanying the new complaint, Guri filed a cross-complaint for interpleader against the other parties to the action and deposited the \$250,000 with the clerk of the superior court.<sup>6</sup>

The next day, March 18, 2008, the court heard and decided Kashani's motion for lien priority. The court first dealt with various contentions the parties had raised in their extensive papers. The court rejected as untimely Kashani's argument that CRG had not been entitled to proceed from the outset because by acquiring numerous judgments in California it had conducted intrastate business without qualifying to do so. (Corp. Code, §§ 17451, subd. (a), 17456 subd. (a).) The court therefore refused to disturb its ruling adverse to EMM. Similarly, citing the timing of CRG's action and Guri's interpleader, the court declined to defer and abstain from deciding in favor of those proceedings.

The court also readdressed its ruling that CRG was not entitled to discovery. CRG stated that it still needed discovery regarding "corporate governance" issues, by which it

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<sup>6</sup> Guri had not deposited the funds with the sheriff, as previously directed. After Ncom levied on \$5,000, Guri turned over the remaining \$245,000 to CRG, which ultimately deposited those funds in connection with Guri's interpleader.

was seeking to invalidate Kashani's fee agreement under Delaware law and preclude Kashani's lien. The court asked CRG how it possessed standing to raise those issues. CRG replied by citing *Gheewalla, supra*, 930 A.2d 92, as allegedly holding that officers and directors of an insolvent corporation owe duties to its creditors.<sup>7</sup> The court then ruled in favor of Kashani, finding that his attorney's lien was valid and superseded the previous assignment order.

On April 4, 2008, the court entered formal orders in both actions, (1) determining the validity and priority of Kashani's attorney lien with respect to the \$250,000, (2) denying EMM's motion for lien priority, and (3) denying CRG's request that the order be without prejudice to future proceedings or actions in CRG's action. From those orders CRG has appealed.

## **DISCUSSION**

### *1. Qualification of CRG in California.*

Before turning to CRG's contentions, we address Kashani's arguments that the appeal should be dismissed because CRG conducted intrastate business in California by purchasing several judgments against Ncom from California creditors without having qualified to do business in this state. In this regard, Corporations Code section 17456, subdivision (a) provides, "A foreign limited liability company transacting intrastate business in this state shall not maintain any action, suit, or proceeding in any court of this state until it has registered in this state." Kashani contends that this prohibition both forecloses this appeal and also nullifies the judicial lien on which CRG based its claim below.

Kashani bears the burden of proof on these contentions. (See *United Systems of Arkansas, Inc. v. Stamison* (1998) 63 Cal.App.4th 1001, 1007 [applying Corp. Code, § 2203, subd. (c)].) He has not carried that burden. The post-trial court decision, 2009 certificate from the Secretary of State that Kashani has included in his respondent's

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<sup>7</sup> The case actually holds the opposite. (*Gheewalla, supra*, 930 A.2d at p. 103.)



appendix without a proper motion for judicial notice (Cal. Rules of Court, rule 8.252(a)), cannot qualify as part of this record. Furthermore, even if CRG were shown not to have registered to do intrastate business, the remedy would be abatement, not dismissal. (See *United Medical Management, Ltd. v. Gatto* (1996) 49 Cal.App.4th 1732, 1740.)

For these reasons, we deny Kashani's request for dismissal of the appeal or for affirmance on a new ground without expressing any opinion on the claim of noncompliance by CRG with the registration requirement of Corporations Code section 17451, subdivision (a) or the impact of CRG's alleged failure to qualify on its claim that its lien is superior to Kashani's. (*A. E. Cook Co. v. K S Racing Enterprises, Inc.* (1969) 274 Cal. App.2d 499, 501 [". . . provided, of course, that in the meantime substantive defenses have not accrued nor third party rights intervened"].)

## *2. Refusal to Defer to CRG's Action.*

CRG's first contention is that the trial court should have abstained from deciding the issues of lien priority under sections 708.180 and 708.190. Instead, CRG contends, the court should have deferred and remitted resolution of those matters to the creditor's suit that CRG commenced six months after it initiated the summary proceedings at issue here, and particularly the interpleader cross-complaint that Guri filed in the creditor's suit the day before the final hearing of March 18, 2008. This contention, and the arguments CRG asserts in support of it, lack merit.

CRG starts by alleging that the court did not proceed under section 708.180, but rather acted under section 720.110 et seq., which applies when a levy under various writs has occurred. CRG is not only wrong, but distorts the record. In support of its claim, CRG relies on the trial court's references to a case under the latter procedure when discussing discovery. (*Whitehouse v. Six Corporation* (1995) 40 Cal.App.4th 527.) But the record is clear that the court referred to *Whitehouse* only as an instructive analogy while recognizing that the present proceedings were taking place under another statute, section 708.180.

Addressing that statute, CRG next argues that deference to CRG's action -- its "creditor's suit" -- was mandatory under subdivisions (b)(2) and (b)(3) of section 708.180. Those subdivisions provide that the court shall not determine the parties' interests in the property through the summary procedure of the statute if the adverse claim is made in good faith, and either (1) "a civil action (including a creditor's suit) is pending" with regard to those interests when the notice for examination of the third party is served (subd. (b)(2)), or (2) "[t]he court determines that the interests in the property or the existence of the debt should be determined in a creditor's suit" (subd. (b)(3)).<sup>8</sup>

With respect to subdivision (b)(2), CRG recognizes that its action was not pending when the proceedings began. Nonetheless, CRG insists that the subdivision should be construed to cover an action CRG filed six months after it commenced the summary proceeding, utilized it to obtain adverse adjudication of EMM's claim, and obtained two continuances to acquire more information on which CRG's action was based. This request that we rewrite subdivision (b)(2) to apply to an after-filed action must be rejected: the Legislature has clearly ordained otherwise.

With respect to subdivision (b)(3), CRG contends that as a matter of law the parties' interests would be more suitably determined in CRG's action. (Cf. *Sea Foods Co. Ltd v. O.M. Foods Co., Ltd* (2007) 150 Cal.App.4th 769, 785 (*Sea Foods*).) We reject this contention for several reasons. First, the proceedings before us have already determined the parties' claims to the \$250,000. That includes CRG's claims regarding Kashani's lien under Delaware law, which CRG insists -- after advancing them at length below and losing -- were too complex for a section 708.180 proceeding. Moreover, it is doubtful that CRG's action actually constitutes a "creditor's suit" within the meaning of section 708.180, subdivision (b)(3). A creditor's suit is an action against a third person who is indebted to the judgment debtor, or has property in which the debtor has an

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<sup>8</sup> CRG does not contend that Kashani's claim was made in bad faith.

interest. The action is brought “to have the interest or debt applied to the satisfaction of the money judgment.” (§ 708.210.) That is not the gravamen of CRG’s action.

CRG finally contends that Guri’s deposit of the money under the rubric of CRG’s action ousted the trial court of jurisdiction over the controversy – one day before it ruled – and rendered the court’s decision “futile,” because now the money had been placed beyond the court’s reach. But the authorities that CRG cites do not sustain the notion that a second-filed proceeding in interpleader (which is not in rem) trumps the previously established jurisdiction of a sister court. If anything, it is the court in the more recently commenced action that generally defers. (See *Glade v. Glade* (1995) 38 Cal.App.4th 1441, 1449-1450; 2 Witkin, Cal. Procedure (5th ed. 2008) Jurisdiction, § 430, pp. 1082-1083.) Moreover, it would ill serve the superior court to allow Guri, who withheld depositing the funds when so ordered below, to claim that her subsequent deposit should preempt the original proceedings.

We note that CRG received a benefit from the summary proceeding when the court ruled that its lien was superior to EMM’s. We decline to allow CRG either to waste judicial time by relitigating this issue<sup>9</sup> or to retain this benefit yet shop for another judge to decide the priority of Kashani’s lien by initiating a belated so-called creditor’s suit and then claiming that the trial court should have deferred its decision.

### *3. Intervention Procedure.*

CRG contends that the court improperly allowed Kashani (and EMM) to intervene in the proceedings, as permitted by section 708.190, without filing complaints in intervention, as prescribed by section 387, subdivision (a). This is a non-issue. As we have seen, Kashani and EMM did file complaints in intervention. CRG’s claim therefore fails, regardless of whether the court correctly or incorrectly believed that those pleadings were not required for postjudgment intervention under section 708.190. Moreover,

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<sup>9</sup> CRG has included EMM’s claim in its creditor’s suit.

despite CRG's assertion in its reply brief that Kashani and EMM did not serve CRG with the complaints, the record contains proofs of such service.

#### 4. *Discovery.*

CRG contends that the court erroneously precluded it from conducting discovery of nonparties to the proceeding. The stated object of discovery was Aura, Ncom's original parent company. Kashani claimed that Aura was the source of the Ncom stock he had purchased from Ncom in 2002. CRG argued that Kashani had failed to prove this claim, but that if the court disagreed it "should continue the [January 29, 2008] hearing to allow [CRG] to take the third person exam of Aura Systems and to obtain documents from it to verify the transfer of shares to [Ncom]."

At the hearing, the court granted a continuance to allow further briefing and another session of Kashani's judgment debtor's examination, but not for any more discovery. The court cited section 2016.070 and *Whitehouse v. Six Corporation, supra*, 40 Cal.App.4th 527, 535-536, as authority that nonparty discovery was not available in the summary proceeding.<sup>10</sup>

CRG cites a portion of section 780.180, subdivision (a) as authorizing the discovery it wished to pursue. The statute states, "The court may grant a continuance for a reasonable time for discovery proceedings, the production of evidence, or other preparation for the hearing." Particularly in light of section 2016.070, the reference to "discovery proceedings" does not necessarily encompass all the procedures of the Civil Discovery Act, section 2016.010 et seq. The quoted language grants the court discretion to continue the summary proceeding to allow certain discovery. Here the court exercised that discretion and continued the merits hearing for further judgment debtor's examination, but not for discovery from Aura.

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<sup>10</sup> Section 2016.070 provides: "This title [the Civil Discovery Act, § 2016.010 et seq.] applies to discovery in aid of enforcement of a money judgment only to the extent provided by Article 1 (commencing with Section 708.010) of Chapter 6 of Title 9 of Part 2" (interrogatories to a judgment debtor).

That ruling was not an abuse of discretion.<sup>11</sup> The court did not preclude discovery; it curtailed discovery after a reasonable time. In requesting a continuance for discovery from Aura, CRG yet avowed that the evidence already acquired did not support Kashani's claim of his stock's origin. CRG's position thus did not disclose compelling need for the discovery. The court did grant CRG a continuance to pursue further discovery from Kashani, even though the proceeding was almost five months old. It was not an abuse of discretion to limit the continuance as the court did.

*5. Validity and Applicability of Kashani's Attorney's Lien.*

CRG finally seeks to overturn the determination in favor of Kashani's lien by claiming, on a number of bases, that the lien is either presently ineffective or generally invalid. These contentions are unavailing.

We note first that the trial court's ruling was prima facie in accord with the law governing attorney's liens, as explained and illustrated in the *Cetenko v. United California Bank* (1982) 30 Cal.3d 528 (*Cetenko*). In that case, as here, the attorney's fee agreement provided that any amount recovered would be subject to a lien for attorney fees earned under the agreement. More than two years later, a judgment creditor of the client obtained a lien on the client's cause of action or eventual judgment under the predecessor of section 708.410 et seq.

On appeal from an order granting the attorney's motion for release to him of the entire judgment he had obtained for the client, a unanimous Supreme Court held that the attorney's lien was valid and took priority over the judgment creditor's lien. The judgment creditor asserted several challenges to the lien's validity, but did not contend that the attorney's rate was excessive or that he had misrepresented his billable hours. After rejecting the creditor's challenges – including that the lien was invalid because it

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<sup>11</sup> Appellant claims that this issue presents “a question of law and is reviewed under a de novo standard of review.” (AOB, at p. 18.) We disagree and apply the abuse of discretion standard. Assuming the standard of review is what appellant claims, the trial court was correct for the reasons stated in the preceding paragraph.

was a ““secret”” lien (*Cetenko, supra*, 30 Cal.3d at pp. 532-533) – the Supreme Court applied the rule of Civil Code section 2897, to the effect that liens take priority in the order of when they were created. The attorney’s lien had been created at the time of the fee contract and thus took precedence over the judgment creditor’s later lien.<sup>12</sup> It follows that absent some invalidity, Kashani’s lien, which was created in the 2002 fee agreement, took priority over CRG’s lien, which it obtained in August 2007.

We proceed to examine CRG’s claims that Kashani’s lien was either inoperative or invalid. First, CRG cites a document by which Ncom acknowledged having assigned to EMM its federal judgment against Remington and Guri at the beginning of the proceedings below. CRG claims that such an assignment divested Kashani of his lien, which was either transferred to EMM or extinguished. CRG cites no authority for this claim other than Civil Code section 3522, which does not support or sustain it. Furthermore, by its terms Kashani’s lien also attached to Guri’s payment, which was the subject of a settlement of Ncom’s federal case, and that was not assigned.

CRG also contends that the lien was not operative because there was no recovery that would have triggered the contractual duty to pay fees because Guri never physically paid the \$250,000 to Ncom. The argument approaches sophistry. CRG seeks to take advantage of Guri’s defiance of the court’s turnover order. This diversion of the funds, however, does not affect Kashani’s lien and its priority over CRG’s, even if Kashani’s practical entitlement to the funds must await their release from court.

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<sup>12</sup> There is good reason for this result. As the Supreme Court observed: “Public policy favors the conclusion we reach in this case. If an attorney’s claim for a lien on the judgment based on a contract for fees earned prior to and in the action cannot prevail over the lien of a subsequent judgment creditor, persons with meritorious claims might well be deprived of legal representation because of their inability to pay legal fees or to assure that such fees will be paid out of the sum recovered in the latest lawsuit. Such a result would be detrimental not only to prospective litigants, but to their creditors as well.” (*Cetenko, supra*, 30 Cal.3d at pp. 535-536.)

CRG claims that the amount of Kashani's fees could not properly be determined without segregating Kashani's time spent as Ncom's attorney from activities done wearing other hats. This is irrelevant. Kashani provided substantial evidence that documented the fee he earned.

The remainder of CRG's arguments challenges the validity of the fee agreement itself. CRG first asserts that the agreement was violated rule 3-300 of the Rules of Professional Conduct, which provides that an attorney may not enter into a business agreement with a client, including one for a lien on the client's property, unless the transaction is fair and the client is given in writing a "reasonable opportunity to consult an independent attorney before agreeing."

Assuming rule 3-300 applies to a contingent fee agreement that provides for a lien on the recovery (see *Fletcher v. Davis* (2004) 33 Cal.4th 61, 65, fn. 3), CRG's argument still fails. CRG recognizes that Kashani's agreement contained a recital that "Client acknowledges that it has had the opportunity to consult with independent counsel before entering into this agreement." But CRG objects because the text does not say "reasonable" before the word "opportunity." We decline to void this fee agreement for want of an adjective. Appellant also argues that there is no acknowledgment that independent counsel's "advice was given or followed." But rule 3-300 does not require that the client actually obtain independent advice, let alone follow it, and there is no evidence that the client was not afforded a reasonable opportunity to consult with another lawyer.

CRG argues that the fee agreement is invalid because it was made between a corporation (Ncom) and a director with an interest in the subject matter (Kashani). In the first place, we seriously question CRG's standing to raise this claim. Any legal deficiency by reason of an "interested director" would affect the right of the director or others to enforce the agreement against the corporation. It would not render the agreement generally illegal or void as against public policy, so as to permit a competing lienholder to claim that the agreement's lien should be disregarded.

In this connection, CRG does not have standing to assert any rights of Ncom by reason of *Gheewalla, supra*, 930 A.2d 92. That decision opined – in dictum – that creditors of an insolvent corporation would be entitled to assert derivative claims on behalf of the corporation against corporate directors for breach of fiduciary duty. (See *id.* at pp. 94, 101-104.) The case did not purport to authorize such creditors to assert corporate rights for their own advantage in every litigation situation they encounter.

In any event, an agreement with an interested director is not necessarily subject to avoidance by the corporation for that reason. If the contract was “fair as to the corporation” when adopted, it is neither void nor voidable by reason of the director’s participation. (Del. Code, tit. 8, § 144(a)(3).) Kashani presented extensive evidence that the fee agreement was fair to Ncom from the outset, and there was no contrary showing.

Finally, CRG contends that the fee agreement is unenforceable because it was not executed by an authorized officer of Ncom. Kashani’s father signed the agreement as a director of Ncom, and CRG asserts that corporate directors, as contrasted with officers, were not authorized to execute contracts for the corporation. But even if this is so, it is well established that, under the rule of implied ratification, a corporation that receives and accepts the benefits of an unauthorized contract thereby ratifies it and is estopped to deny the contract’s validity and binding effect. (E.g., *Hannigan v. Italo Petroleum Corporation* (Del. 1945) 47 A.2d 169, 172-173; see 2A Fletcher Cyc. Corp. (2009 ed.) Ratification and Estoppel, § 773, pp. 519-537.) That is the situation here. Ncom received hundreds of hours of performance by Kashani, and counsel’s efforts yielded Ncom a seven-figure judgment. Once again, CRG is in no position to void the fee agreement or Kashani’s lien.



## **DISPOSITION**

The orders under review are affirmed. Kashani shall recover costs on appeal.

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

MOHR, J.\*

We concur:

FLIER, ACTING P. J.

BIGELOW, J.

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\* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.